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E-Filed on: May 3, 2010

Attorneys for Nevada Power Company d/b/a NV Energy

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

THE RHODES COMPANIES, LLC, a/k/a
"Rhodes Homes," et al.,

Debtors.

Case No: BK-S-09-14814-LBR
(Jointly Administered)

Chapter 11

AFFECTS: ALL DEBTORS

NEVADA POWER COMPANY d/b/a NV ENERGY'S REQUEST TO CURE
EXECUTORY CONTRACT(S) AND/OR LEASE(S) IDENTIFIED ON DEBTORS'
NOTICE OF FILING OF FINAL CONTRACT ASSUMPTION
LIST - EXHIBIT "A" [DOCKET NO. 1098]
WITH CERTIFICATE OF SERVICE

Creditor/Utility Provider NEVADA POWER COMPANY d/b/a NV ENERGY ("NV Energy") hereby files this Request to Cure Executory Contract(s) and/or Lease(s) Identified on Debtors' Notice of Filing of Final Contract Assumption List – Exhibit "A" [Docket No. 1098] ("Contract Assumption List"). NV Energy requests that the Contract Assumption List be amended to identify the cure(s) necessary to assume RR3 MPA 175637, which requires installation of a final feeder for Rhodes Ranch and payment of any and all costs related to installation of the required feeder as well as execution of any necessary documents related to installation of the required feeder.

MEMORANDUM OF POINTS AND AUTHORITIES

A. Background.

The First Lien Steering Committee's Third Amended Modified Plan of Reorganization Pursuant to Chapter 11 (the "Plan") was approved by the Bankruptcy Court's March 12, 2010,

Order confirming the Plan (the “**Confirmation Order**”) [Docket No. 1053]. On April 1, 2010, a Notice of Effective Date of Third Amended Modified Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code for the Rhodes Companies, LLC, et. al. (“**Notice**”) was filed with the Bankruptcy Court [Docket No. 1079].

Pursuant to the Confirmation Order and Notice, Debtors had until April 16, 2010, to amend Exhibit “N” of Debtors’ Disclosure Statement with respect to executory contracts to be assumed by Debtors and the identified cure to assume said contracts. On April 16, 2010, Debtors filed the Contract Assumption List, which amended Exhibit “N” and specified May 3, 2010, as the final date for creditors to disagree with Debtors’ proposed cure identified on the Contract Assumption List and to identify the creditors’ required cure.

B. Debtors’ Assumption of Executory Contracts.

Article V, Paragraph A of the Plan provides the general framework for which the Debtors shall assume certain contracts:

Except as otherwise provided in the Plan, the Debtors’ executory contracts or unexpired leases not assumed or rejected pursuant to a Bankruptcy Court order prior to the Effective Date shall be deemed rejected pursuant to sections 365 and 1123 of the Bankruptcy Code, except for those executory contracts or unexpired leases: (1) listed on the schedule of ‘Assumed Executory Contracts and Unexpired Leases’ attached to the Disclosure Statement as Exhibit N

Article V, Paragraph B of the Plan sets forth the provisions to cure any existing defaults with respect to the assumed contracts:

With respect to each of the Debtors’ executory contracts or unexpired leases listed on the schedule of ‘Assumed Executory Contracts and Unexpired Leases,’ the Plan Proponent shall have designated a proposed Cure, and the assumption of such executory contract or unexpired lease may be conditioned upon the disposition of all issues with respect to Cure. Any provisions or terms of the Debtors’ executory contracts or unexpired leases to be assumed pursuant to the Plan that are, or may be, alleged to be in default, shall be satisfied solely by Cure, or by an agreed-upon waiver of Cure.

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Article V, Paragraph I of the Plan provides that the contracts assumed pursuant to Article V, Paragraph A of the Plan, shall include all modifications, amendments, supplements, and other agreements thereto:

Unless otherwise provided in the Plan, each executory contract or unexpired lease that is assumed shall include all modifications, amendments, supplements, restatements, or other agreements that in any manner affect such executory contract or unexpired lease, and all executory contracts and unexpired leases related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated or is rejected or repudiated under the Plan.

C. Debtors' Assumption Of Rhodes Ranch RR3 MPA 175637 and Rhodes Ranch MP 3 Addendum I 191893 Requires Installation Of The Final Feeder Line In The Rhodes Ranch Master Plan.

The Contract Assumption List provides that Debtors assume NV Energy contracts identified as "Rhodes Ranch RR3 MPA 175637" and "Rhodes Ranch MP 3 Addendum I 191893" (collectively, the "NV Energy Assumed Contracts") (see pp. 16-18 of the Contract Assumption List). The excerpt of the Contract Assumption List, as it pertains to NV Energy, is attached hereto as **Exhibit "1"**. The NV Energy Assumed Contracts must be assumed in their entirety, including Debtors' contractual commitment to install the required final feeder for Rhodes Ranch.

The following constitutes the cure requirements that Debtors/Reorganized Debtors must satisfy relative to the NV Energy Assumed Contracts pursuant to the Plan (the "NV Energy Cure Requirements"):

Rhodes Ranch RR3 MPA 175637 and 191893 require installation of the last feeder for the Rhodes Ranch RR3 MPA. The design, estimated costs of \$545,581 and additional documents to be executed to effectuate this cure have been previously provided to Debtors/Reorganized Debtors in a letter dated April 13, 2010. NV Energy does not attach those documents and information to this pleading due to customer confidentiality issues and to protect NV Energy's confidential and proprietary information; however, NV Energy is willing to produce such information and documentation to this Court under seal if necessary for purposes of resolving this pleading.

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1 **D. Conclusion.**

2 NV Energy respectfully requests that Debtors amend the Contract Assumption List to
3 provide for the NV Energy Cure Requirements.

4 DATED this 3rd day of May, 2010.

5 LEACH JOHNSON SONG & GRUCHOW

6 By: /s/ KIRBY C. GRUCHOW, JR., ESQ.

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15 NV Energy

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CERTIFICATE OF SERVICE

Do not use this form to prove service of a summons and complaint. To prove service of a summons and complaint use the certificate in the court form entitled "Adversary – Summons and Notice of Scheduling Conference in an Adversary Proceeding" which is available on the Court's website at www.nvb.uscourts.gov.

1. On May 3, 2010, I served the following document(s) (*specify*):

NEVADA POWER COMPANY d/b/a NV ENERGY'S REQUEST TO CURE EXECUTORY CONTRACT(S) AND/OR LEASE(S) IDENTIFIED ON DEBTORS' NOTICE OF FILING OF FINAL CONTRACT ASSUMPTION LIST - EXHIBIT "A" [DOCKET NO. 1098] WITH CERTIFICATE OF SERVICE

2. I served the above-named document(s) by the following means to the persons as listed below:

(Check all that apply)

☒ a. ECF System (You must attach the "Notice of Electronic Filing", or list all persons and addresses and attach additional paper if necessary)

Zachariah Larson, Esq. Larson & Stephens ecf@lslawnv.com 810 South Casino Center Boulevard, Suite 104 Las Vegas, Nevada 89101 Counsel for Debtor(s)	James I. Stang, Esq. jstang@pszilaw.com Shirley S. Cho, Esq. scho@pszilaw.com Pachulski Stang Ziehl & Jones, LLP 10100 Santa Monica Boulevard, 11 th Floor Los Angeles, California 90067 Counsel for Debtor(s)
Jeffrey R. Sylvester, Esq. jeff@sylvesterpolednak.com James B. MacRobbie, Esq. darhyl.kerr@dlapiper.com Sylvester & Polednak, Ltd. 7371 Prairie Falcon Road, Suite 120 Las Vegas, Nevada 89128 Counsel for Credit Suisse, Cayman Islands Branch	Eric Ransavage, Esq. eransavage@ssllplaw.com Shinnick Ryan & Ransavage 2881 Business Park Court, Suite 210 Las Vegas, Nevada 89128 Counsel for Leslie Blasco, et al.
Robert R. Kinas, Esq. rkinas@swlaw.com Snell & Wilmer LLP 3883 Howard Hughes Parkway, Suite 1100 Las Vegas, Nevada 89169 Counsel for Caterpillar Financial Services Corporation	Philip S. Gerson, Esq. banknv@rocgd.com 9950 West Cheyenne Avenue Las Vegas, Nevada 89129 Counsel for Clark County

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1 Janet L. Chubb, Esq. <u>jlc@jonesvargas.com</u> 2 Jones Vargas 100 West Liberty Street, 12 th Floor 3 P.O. Box 281 Reno, Nevada 89504 4 Counsel for Commerce Associates, LLC	J. Thomas Beckett, Esq. Rew R. Goodenow, Esq. <u>ecf@parsonsbehle.com</u> Parsons Behle & Latimer 201 South Main Street, Suite 1800 P.O.B. 45898 Salt Lake City, Utah 84145 Counsel for Creditors Committee
5 David A. Colvin, Esq. <u>dcolvin@marquisaurbach.com</u> 6 Marquis & Aurbach 10001 Park Run Drive 7 Las Vegas, Nevada 89145 8 Counsel for Dana Kepner Companies, LLC and Janina Guthrie	Jeffrey D. Olster, Esq. <u>olster@lbbslaw.com</u> Lewis Brisbois Bisgaard & Smith, LLP 6385 South Rainbow Boulevard, Suite 600 Las Vegas, Nevada 89118 Counsel for Harsch Investment Properties – Nevada, LLC
9 Carol L. Harris, Esq. <u>c.harris@kempjones.com</u> 10 Kemp, Jones & Coulthard, LLP 3800 Howard Hughes Parkway, 17 th Floor 11 Las Vegas, Nevada 89169 12 Counsel for In re: Kitec Fitting Litigation Class Plaintiffs	Richard I. Dreitzer, Esq. <u>richard.dreitzer@bullivant.com</u> Counsel for Integrity Masonry, Inc. and Palecek
13 Brett Axelrod, Esq. <u>axelrodb@gtlaw.com</u> 14 Greenberg Traurig, LLP 3773 Howard Hughes Parkway, Ste. 400 North 15 Las Vegas, Nevada 89169 16 Counsel for James Rhodes and Sagebrush Enterprises, Inc.	Bart K. Larsen, Esq. <u>blarsen@klnevada.com</u> 3320 West Sahara Avenue, Suite 380 Las Vegas, Nevada 89102 Counsel for Reef Colonial, LLC
17 Thomas E. Crowe, Esq. <u>tcrowelaw@yahoo.com</u> 18 7381 West Charleston Boulevard, Suite 110 Las Vegas, Nevada 89117 19 Counsel for Shane Smith and Virginia Springall-Smith	Janiece S. Marshall, Esq. <u>jm@amclaw.com</u> Anderson McPharlin & Conners, LLP 2300 West Sahara Avenue, 8 th Floor Las Vegas, Nevada 89102 Counsel for Stanley Consultants, Inc.
20 Nile Leatham, Esq. <u>nleatham@klnevada.com</u> 21 Timothy P. Thomas, Esq. <u>tthomas@klnevada.com</u> 22 Kolesar & Leatham, Chtd. 3320 West Sahara Avenue, Suite 380 23 Las Vegas, Nevada 89102 24 Counsel for Steering Committee of Senior Secured Lenders	Charles M. Litt, Esq. <u>rblack@feinberggrant.com</u> Feinberg Grant Mayfield Kaneda & Litt 1955 Village Center Circle Las Vegas, Nevada 89134 Counsel for The Preserve at Elkhorn Springs Homeowners Association, Inc.

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Virginia Cronan Lowe, Esq. <u>Virginiacronan.lowc@usdoj.gov</u> U.S. Department of Justice – Tax Division P.O.B. 683 Ben Franklin Station Washington, D.C. 20044 Counsel for United States of America – Internal Revenue Service	Mark R. Somerstein, Esq. <u>Mark.somerstein@ropesgray.com</u> Ropes & Gray LLP 1211 Avenue of the Americas New York, New York 10036 Counsel for Wells Fargo Bank, N.A.
Donald H. Williams, Esq. <u>donaldhwilliamsllaw@gmail.com</u> 501 South Rancho Drive, #D-22 Las Vegas, Nevada 89106 Counsel for Westar Kitchen & Bath, LLC	Damon K. Dias, Esq. <u>ddias@diaslawgroup.com</u> Dias Law Group, Ltd. 601 South 6 th Street Las Vegas, Nevada 89101 Counsel for X-It at 215, LLC
Edward M. McDonald <u>Edward.m.mcdonald@usdoj.gov</u> Office of U.S. Trustee 300 Las Vegas Boulevard South, Suite 4300 Las Vegas, Nevada 89101 Counsel for U.S. Trustee – LV – 11	

☐ b. **United States mail, postage fully prepaid**
(List persons and addresses. Attach additional paper if necessary)

☐ c. **Personal Service** *(List persons and addresses. Attach additional paper if necessary)*

I personally delivered the document(s) to the persons at these addresses:

☐ For a party represented by an attorney, delivery was made by handing the document(s) to the attorney or by leaving the document(s) at the attorney's office with a clerk or other person in charge, or if no one is in charge by leaving the document(s) in a conspicuous place in the office.

☐ For a party, delivery was made by handing the document(s) to the party or by leaving the document(s) at the person's dwelling house or usual place of abode with someone of suitable age and discretion residing there.

☐ d. **By direct mail (as opposed to through the ECF System)**
(List persons and e-mail addresses. Attach additional paper if necessary)

Based upon the written agreement of the parties to accept service by e-mail or a court order, I caused the document(s) to be sent to the persons at the e-mail addresses listed below, I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☐ e. **By fax transmission** *(List persons and fax numbers. Attach additional paper if necessary)*

Based upon the written agreement of the parties to accept service by fax transmission or a court order, I faxed the document(s) to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax

transmission if attached.

☐

f. By messenger (*List persons and fax numbers. Attach additional paper if necessary*)

I served the document(s) by placing them in an envelope or package addressed to the persons at the addresses listed below and providing them to a messenger for service. (*A declaration by the messenger must be attached to this Certificate of Service*).

I declare under penalty of perjury that the foregoing is true and correct.

Signed on (*date*): May 3, 2010

Heather L. Kelley
(NAME OF DECLARANT)

/s/ Heather L. Kelley
(SIGNATURE OF DECLARANT)

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EXHIBIT “1”

EXHIBIT “1”

CONTRACT COUNTER-PARTY NAME & SERVICE ADDRESS	DEBTOR	TYPE OF CONTRACT	PROJECT/DEVELOPMENT	CURE AMOUNT (LESS RETAINER OR DEPOSIT)
City of Henderson Dept of Utility Services 240 Water Street P.O. Box 95050 Henderson, NV 89009-5050	Tuscany Golf Country Club, LLC	Henderson Water Reclamation Facility	Agreement for use of reclaimed water for golf course and driving range	\$0.00
Southwest Gas Corporation 5241 Spring Mountain Road Las Vegas, NV 89150-0002	Rhodes Design and Development Corporation/Rhodes Homes	Multiple Gas Main Extension Agreements and other ancillary and related agreements	Various	\$0.00
Nevada Power 6226 West Sahara Avenue Las Vegas, Nevada 89146	Rhodes Design and Development Corporation/Rhodes Homes	Feeder line agreement	Rhodes Ranch RR2 MPA 90777	\$0.00
Nevada Power 6226 West Sahara Avenue Las Vegas, Nevada 89146	Rhodes Design and Development Corporation/Rhodes Homes	Feeder line agreement	Rhodes Ranch RR3 MPA 175637	\$0.00
Nevada Power 6226 West Sahara Avenue Las Vegas, Nevada 89146	Rhodes Design and Development Corporation/Rhodes Homes	Feeder line agreement	Palm Hills MPA 84071	\$0.00
Nevada Power 6226 West Sahara Avenue Las Vegas, Nevada 89146	Rhodes Design and Development Corporation/Rhodes Homes	Line Extension Agreement	Spanish Hills Unit 5A 169308	\$0.00
Nevada Power 6226 West Sahara Avenue Las Vegas, Nevada 89146	Rhodes Design and Development Corporation/Rhodes Homes	Line Extension Agreement	Sherwood Greens Entry 191421	\$0.00
Nevada Power 6226 West Sahara Avenue	Rhodes Design and Development	Line Extension Agreement	Rhodes Ranch 20-2 179946	\$0.00

CONTRACT COUNTER-PARTY NAME & SERVICE ADDRESS	DEBTOR	TYPE OF CONTRACT	PROJECT/DEVELOPMENT	CURE AMOUNT (LESS RETAINER OR DEPOSIT)
Las Vegas, Nevada 89146	Corporation/Rhodes Homes			
Nevada Power 6226 West Sahara Avenue Las Vegas, Nevada 89146	Rhodes Design and Development Corporation/Rhodes Homes	Line Extension Agreement	Rhodes Ranch Family Park 176691	\$0.00
Nevada Power 6226 West Sahara Avenue Las Vegas, Nevada 89146	Rhodes Design and Development Corporation/Rhodes Homes	Line Extension Agreement	Rhodes Ranch Parcel 10 Unit 1 166490	\$0.00
Nevada Power 6226 West Sahara Avenue Las Vegas, Nevada 89146	Rhodes Design and Development Corporation/Rhodes Homes	Line Extension Agreement	Rhodes Ranch Parcel 10 Unit 11 184632	\$0.00
Nevada Power 6226 West Sahara Avenue Las Vegas, Nevada 89146	Rhodes Design and Development Corporation/Rhodes Homes	Line Extension Agreement	Tuscany Parcel 24 176790	\$0.00
Nevada Power 6226 West Sahara Avenue Las Vegas, Nevada 89146	Rhodes Design and Development Corporation/Rhodes Homes	Line Extension Agreement	Tuscany Parcel 19 176793	\$0.00
Nevada Power 6226 West Sahara Avenue Las Vegas, Nevada 89146	Rhodes Design and Development Corporation/Rhodes Homes	Line Extension Agreement	Tuscany Parcel 25 Models 179549	\$0.00
Nevada Power 6226 West Sahara Avenue Las Vegas, Nevada 89146	Rhodes Design and Development Corporation/Rhodes Homes	Line Extension Agreement	Tuscany Parcel 23 181834	\$0.00
Nevada Power 6226 West Sahara Avenue	Rhodes Design and Development	Design Initiation Agreement	Rhodes Ranch Melrose 189937	\$4,307.00

CONTRACT COUNTER-PARTY NAME & SERVICE ADDRESS	DEBTOR	TYPE OF CONTRACT	PROJECT/DEVELOPMENT	CURE AMOUNT (LESS RETAINER OR DEPOSIT)
Las Vegas, Nevada 89146	Corporation/Rhodes Homes			
Nevada Power 6226 West Sahara Avenue Las Vegas, Nevada 89146	Rhodes Design and Development Corporation/Rhodes Homes	Design Initiation Agreement	Rhodes Ranch MP 3 Addendum I 191893	\$6,145.00
Health Plan of Nevada P. O. Box 15645 Las Vegas, NV 89114-5645	Rhodes Design and Development Corporation/Rhodes Homes	Health insurance agreement		\$0.00
Ceridian 3201 34 th Street South St. Petersburg, FL 33711	Rhodes Design and Development Corporation/Rhodes Homes	Cobra and HIPPA services		\$0.00
American Family Life Assurance Company (AFLAC) 2990 Sunridge Heights Pkwy Suite 140 Henderson, NV 89052	Rhodes Design and Development Corporation/Rhodes Homes	Reimbursement services agreement		\$0.00
Sage Software, Inc. 15195 NW Greenbrier Pkwy Beaverton, OR 97006	Rhodes Design and Development Corporation/Rhodes Homes	Software license agreement		\$0.00
Builder MT 200 Union Boulevard Suite 500 Lakewood, CO 80228	Rhodes Design and Development Corporation/Rhodes Homes	Software license agreement		\$0.00
Builder 1440, Inc. 2000 W. 41 st Street Baltimore, MD 21211	Rhodes Design and Development Corporation/Rhodes	Software license agreement		\$0.00